# The Solicitors' Journal

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# CURRENT TOPICS

### The Law Society's School of Law

THE Law Society may well be proud of its system of legal education, which functioned even before the foundation of its School of Law in 1903. The formal opening of the new premises for its School of Law on 12th April, 1946, to which we have previously referred in these columns, was the occasion of an interesting address by Mr. LEAVER, chairman of the Education Committee, who gave reasons why solicitors should be proud of the history of the School of Law. The first principal was no less a scholar than Dr. Edward Jenks, who acted from 1903 to 1924. Following him was the late Dr. Leslie Burgin, who was not only a member of the Council up to the date of his death last year, but was also Member of Parliament for Luton and a member of successive Governments both before and during the early part of the war. In 1926, Dr. WADE, who is now the Downing Professor of English Law at Cambridge, succeeded Dr. Burgin. From 1928 to 1940 Dr. Radcliffe, of Oxford, was the principal, and in 1940 the present principal, Mr. RODERICK DEW, LL.B., under whose aegis so much has been accomplished, succeeded Dr. Radcliffe. The list of tutors of the school, Mr. Leaver said, was equally interesting. It was headed by Lord Wright and Lord Uthwatt, both former tutors, Sir Maurice Gwyer (late Chief Justice of India and now Vice-Chancellor of Delhi University), Sir Arnold McNair (now a member of the International Court at the Hague), Mr. Justice Willmer, Lord Chorley, Judge David Davies, the late Mr. "Theo" Matthews, Mr. Danckwerts and Mr. Cleveland Stevens (now Director of Studies under the Council of Legal Education). Such a tradition will be an inspiration to those commencing the new chapter in the history of the Society's school in its new premises.

### D.O.R.A. and other Decrees

ONE does not have to be very old to remember the petty restrictions that were continued in the name of "Defence of the Realm" for years after the last war. Dr. C. K. ALLEN, Warden of Rhodes House, Oxford, was right without doubt when he wrote in the *Sunday Times* of 2nd June that "Dora" never quite gave up the ghost. Solicitors who defended shopkeepers for selling cigarettes after 8 p.m. knew that. Whether he is on equally safe ground in attacking the 178 Defence Regulations which, after this latest war, have received a new lease of life as a result of the Supplies and Services (Transitional Provisions) Act, 1945, and the Emergency Powers (Transitional Provisions) Act, 1945, is open to debate, and, sad to relate, that debate must be to a large extent political. While it seems at present to be the chief bone of contention between the two great political parties to discuss exactly where and when private enterprise must cease and State control must begin, the truth, both political and legal, is bound to be not a little clouded by the dust of controversy. Dr. Allen, however, apart from his political sympathies, is a man of much learning, and he seized on an important point in deciding that the new Acts are revolutionary because, instead of conferring emergency powers for a limited period, as hitherto, they and the Regulations made under them become inviolable for five years after a quarantine period of forty days, in which Parliament can move to annul them. It is to be noted that Parliament passed the Acts and the Regulations are subject to the "quarantine period," and this was no doubt why Dr. Allen used the word "revolutionary" and not "unconstitutional." In drawing attention to what he calls "the Ten Thousand Commandments" and the Select Committee's recent confession of its bewilderment at the task of scrutinising them as well as to the dangers to civil liberties in an undue emphasis on the executive in times of transition, Dr. Allen is fulfilling an important role.

### Naturalisation

THE attention of solicitors is drawn in the May issue of the *Law Society's Gazette* to the fact that the Home Office have resumed consideration of applications for naturalisation. The following forms are now available: K—application for a certificate of naturalisation by an alien who is or has been serving in British ships; P—statement in support of a claim for priority in consideration of an application for naturalisation submitted by an alien in employment in commerce or industry who considers that he has made during the war, or is now in a position to make, a substantial contribution to the interests of the country; Q—form similar to P, but applicable to an alien engaged in one of the professions or in business on his own account or otherwise self-employed; R—application for a certificate of nauturalisation by an alien who has served in H.M. Forces and has been discharged. The above forms are obtainable from H.M. Stationery Office. Forms K and R are accompanied by a printed instructional leaflet.

### The Lay Magistracy

ONE of the most vigorous of recent statements of the case for a reformed magistracy is to be found in a sixpenny pamphlet just published by Victor Gollancz, Ltd., for the Haldane Society. It is entitled: "The Justice of the Peace To-day and To-morrow: An Examination of the Magisterial System, with Suggestions for its Improvement," and has been prepared by a sub-committee of the Haldane Society. "Generally," say the writers, "there are too frequent miscarriages of justice in magistrates' courts, in the form of

wrong conduct of proceedings, wrong convictions and wrong sentences." The sub-committee puts forward a number of remedies. One is the discontinuance of the inclusion in the commission of the peace of certain persons as *ex officio* justices. On the other hand, the sub-committee holds that courts of summary jurisdiction should continue to be conducted by a lay magistracy, as a general rule, as at present, but that lay magistrates should be required to undergo a simple course of study of the law of evidence and procedure and the outlines of criminal law. An interesting and welcome proposal is that magistrates should be required to attend quarter sessions or assizes at least twice a year for the purposes of study. Another interesting proposal is that magistrates should be required to undergo a simple course of study of sociology. One of the more serious grievances of advocates and public is dealt with in a recommendation that the clerk should not retire with the magistrates when they consider their decision. The pamphlet is evidently the product of careful thinking and research,and its writers have performed a notable social service.

### The General Medical Council

A CERTAIN amount of limelight, not altogether undesirable in these democratic days, has recently been bestowed on the General Medical Council and its procedure. In a slander action, *Hennessy* v. *Bryanton*, in which Mr. Justice CHARLES delivered judgment on 12th April, 1946, a doctor, whose name had been erased from the medical register on account of alleged "infamous conduct" in a professional respect, succeeded in proving that there was not a word of truth in the story told by the person who had laid the complaint, and was awarded £2,000 damages and costs. In proceedings before the General Medical Council on 29th May, 1946, the Council directed that the doctor's name be restored to the register. In announcing the decision of the Council, the president, Sir H. L. EASON, quoted the words of Mr. Justice Charles, that the Council "not having the advantage of the great mass of evidence that had been put before him and which was not put before them" had, "in the absence of adequate evidence (and they could only deal with the matter on the evidence before them)," come to a conclusion adverse to the practitioner which had resulted, in the firm and clear view of the learned judge, in a gross miscarriage of justice. The transcript of the additional evidence, the president said, had been carefully considered by the Council, and in view of this additional evidence the Council had taken the earliest opportunity of restoring the name of the practitioner to the register. He emphasised that it was imperative in all inquiries held by the Council under s. 29 of the Medical Act, 1858, that an accused practitioner should call before the Council all material and relevant evidence in support of his case. If there was relevant evidence that could be adduced on behalf of the practitioner and was not adduced, the responsibility of any adverse view by the Council must rest with the accused practitioner. From the legal point of view the Council's reference to s. 29 of the Medical Act, 1858, and by implication to the words "due inquiry" therein, and the decision in *In re Spackman* [1942] 2 K.B. 261 is sound, but the question still remains whether it is right and proper that a professional body should have these wide powers without the safeguard that is provided by an appeal against a decision which is contrary to the weight of evidence, or which depends on uncorroborated or obviously perjured testimony.

### Preservation of Footpaths

ONE of the methods by which pedestrians may protect themselves against encroachment by the ubiquitous motor car is to be zealous in the protection of footpaths. At the annual meeting of the Berkshire branch of the Council for the Preservation of Rural England, held on 25th May, the chairman, SCOTT, L.J., said that in view of the expected increase in motor traffic it was of vital importance to take care of those public highways—footpaths, bridleways and driftways—where no wheeled traffic was allowed. Once a public highway, Scott, L.J. said, always in law a public highway, unless stopped pursuant to an Act of Parliament. He added that all those public ways were in danger of being lost and getting overgrown, or being ploughed up, often without any order from the agricultural executive committee, and many were being wilfully obstructed. As chairman of his own parish council he had made a survey with the clerk round the parish, and he suggested that his hearers might stir up their own parish councils to do likewise. To farmers he would say that to get the public rights of way clearly identified and sign-posted was by far the best protection against trespassing. It should be made plain that the duty of maintenance rested on the county council as the highway authority.

### The Inland Revenue Affidavit

A NEW practice is recommended by the Board of Inland Revenue with regard to the Inland Revenue affidavit, in the case of persons dying on or after the 10th April, 1946, following recent resolutions by the Commons' Committee of Ways and Means. The same forms of affidavit should continue to be used, although no estate duty may be payable. When the reduced court fees of 15s. are appropriate, form B.2 or B.4 should be used. Where the gross value of the estate included in the affidavit is under £1,000, and a domicile outside Great Britain is not claimed, the Inland Revenue affidavit may be lodged at the Principal Probate Registry or a District Probate Registry without prior reference to the Estate Duty Office. Finally, where question 3 (*a*), under the heading *Gifts Inter Vivos* on the current print of form No. 36 accompanying the Inland Revenue affidavit, asks for information about gifts made within three years of the death, information must now be given about gifts made within five years preceding the death.

### Land Charges and Public Rights

THE use of the Local Land Charges Register in providing purchasers with the means of knowing what public rights, if any, have accrued in respect of property with which they are dealing is considered by the Council of The Law Society to be of the highest importance. This may be gathered from a note in the May issue of the *Law Society's Gazette*, which points out that the Council were instrumental in securing the enactment of s. 17 of the Town and Country Planning Act, 1944, which provides for the registration as "local" land charges of orders under that Act. It is pointed out that this precedent has been followed in several subsequent Bills. The Local Land Charges Register is kept by reference to properties and not the names of owners. The Lord Chancellor's department has had its attention drawn by the Council to the difficulties that arise in connection with the whole subject, and the *Gazette* states that they understand that the Lord Chancellor's department are considering the possibility of setting up an expert committee to examine it. Unfortunately it will be some time before the committee can be appointed, having regard to pressure of other work.

### Recent Decisions

In *Western India Match Company, Ltd.* v. *Lock and Others*, on 31st May (*The Times*, 1st June), Lord GODDARD, C.J., held that s. 21 of the Limitation Act, 1939, which in effect replaced the Public Authorities Protection Act, 1893, operated to bar an action for the loss of a cargo of potassium chlorate, arising out of the alleged negligence of the Divisional Sea Transport Officers for Basra and Bombay, officers of the Royal Navy and the representative at Basra of the Minister of War Transport, who had requisitioned the ship in which the cargo was immediately before its loss. His lordship held that the action was barred because the Crown was a public authority and, in permitting the shipment of cargoes and deciding what cargoes should in the national interest be carried in a ship which he had requisitioned, the Minister was performing a public duty and exercising a public authority.

# COLLUSION AND CONNIVANCE: THE BURDEN OF PROOF—II

(*Concluded from p.* 254)

In the previous issue (*ante*, p. 253), the position was considered in the light of the authorities upon the construction of the statutes prior to the appeal in *Churchman's* case. In the Court of Appeal, however, a different view was taken, and the judgment in the court below [1945] P. 44, was reversed. In giving the judgment of the court, Lord Merriman, P., says this on the point of onus of proof at p. 50: "First, in the notes of his judgment Denning, J., refers to *Lloyd* v. *Lloyd*. In that case Langton, J., referred with approval to some observations of Bucknill, J., on the change effected in the burden of proof in relation to connivance by virtue of the amendment by s. 4 of the Matrimonial Causes Act, 1937, of s. 178 of the Judicature Act, 1925, which in turn substantially reproduced, but in different language, the effect of s. 31 of the Matrimonial Causes Act, 1857. Bucknill, J., appears to suggest that in placing expressly upon the petitioner the burden of satisfying the court of the absence of connivance the legislature has reversed the presumption of law against the existence of connivance (*see also Germany* v. *Germany*, *per* Langton, J.). As the Attorney-General pointed out in the course of his argument, it is vital to a correct approach to the determination of the question of connivance that the effect of the present enactment should be appreciated. That it places the burden of proof on the petitioner is indisputable; whether a radical change in the law was thereby effected may be open to question. The issue does not arise at all unless the circumstances are such as to lead to a suspicion of connivance calling for investigation. Once the issue has been raised it might well be thought that, since in most cases of connivance, if not necessarily in all, the facts, including the all-important fact of his state of mind, are so especially in the knowledge of the party himself, the burden of dispelling suspicion once aroused was always on the party, even under the former wording of s. 178." He then went on to refer to a speech of Lord Wensleydale in an earlier case under the Act of 1857, with regard to the onus of proof under s. 31, and he continues: "But it is not necessary to express any final opinion on the question where the burden of proof lay under the earlier Acts or on the reasons for the change in the wording. Assuming that the present Act deliberately imposes a new burden on the petitioner, this cannot in our opinion mean that there is now a presumption of law that he has been guilty of connivance. The same strict proof is required in the case of a matrimonial offence as is required in connection with criminal offences properly so called." He then referred to the limited effect of the statutory imposition of the burden of proof upon a party charged with an offence, and he illustrated this by referring to the decision of the Privy Council in *Attygalle* v. *R.* [1936] A.C. 338, that a provision in an ordinance of Ceylon reproducing the corresponding principle of the English law of evidence to the effect that, where any fact is especially within the knowledge of any person the burden of proving that fact is upon him, does not under the law of Ceylon cast upon the accused person the burden of proving that no crime had been committed, in that case an alleged illegal operation, and he went on to point out that the fact that this very general statement certainly required qualification was not germane to the question.

He then concludes by saying: "We are, therefore, unable to agree with the view expressed in *Germany* v. *Germany* and the other cases referred to above, that a change in the burden of proof, assuming that it has occurred, operates to produce a presumption of guilt of connivance when the presumption has hitherto been the other way. After all, as du Parcq, L.J., pointed out during the argument, the incidence of the burden of proof as a determining factor of the whole case is duly of importance if the tribunal finds the evidence, pro and con, so evenly balanced that it can come to no definite conclusion. Then the onus will determine the matter. But if the tribunal, after hearing and weighing the evidence, comes to a determinate conclusion, the onus has nothing to do with it and need not be further considered (*per* Lord Dunedin, in *Robins* v. *National Trust Company* [1927] A.C. 515, 520). Except in this sense we are unable to accept the view that the presumption of law with regard to connivance has in any way been reversed."

In the last case to which reference will be made, that is to say the second case mentioned at the commencement of this article, *Emanuel* v. *Emanuel* (1945), 2 All E.R. 494, Denning, J., considered and explained the judgment of the Court of Appeal with regard to the onus of proof. The case before him dealt with the question of collusion, but, as he pointed out, the same principles apply as in the case of connivance, and he drew a distinction between a provisional presumption from which the court *may*, not must, infer the fact in issue, and a compelling presumption from which it *must* in law infer the fact in issue. He says this, at p. 496: The Matrimonial Causes Act, 1937, puts on the petitioner the legal burden of proving that the petition is not presented or prosecuted in collusion with the respondent or either of the respondents. In order to discharge that burden the petitioner is entitled to rely in the first instance on the presumption of innocence. That, however, is a provisional presumption only, by which I mean that it is a presumption (like the presumption of testamentary capacity or the presumption of negligence in cases of *res ipsa loquitur*) from which the court may (not must) infer the fact in issue and which puts on the other side (when there is one) the provisional burden of calling evidence or taking the consequences. It must be distinguished from a compelling presumption (like the presumption of legitimacy or the presumption in favour of the holder of a bill) from which the court must in law infer the fact in issue unless the contrary or some other fact is proved and which puts on the other side the legal burden of proving that fact. The presumption of innocence in divorce cases is not a compelling presumption which puts on the other side the burden of proving collusion. If circumstances appear, which, whilst not proving collusion, lead to a reasonable suspicion of it, they may counter-balance the provisional presumption (just as suspicion of incapacity or an explanation consistent with due care respectively may counter-balance the provisional presumptions to which I have referred) and thus may shift the provisional burden back again. These provisional burdens which arise during the case, and may shift within an issue, must be distinguished from the legal burden of proving the fact in issue which never shifts." He then pointed out that provisional presumptions and burdens were not so much propositions of law as propositions of ordinary good sense, and he referred to certain cases in support of this view. He then goes on: "The legal burden on the other hand expresses a proposition of law, and is, in the last resort, decisive. The statute in divorce cases puts on the petitioner the legal burden of proving a negative which, though unusual, is not unknown to the law. At the end of the case the court must be satisfied on the evidence that the petition is not presented as prosecuted in collusion with the respondent. It need not be satisfied beyond reasonable doubt. It is sufficient if the greater probability is that there was no collusion. If the matter is evenly balanced, the legal burden comes into play and requires the court to say that it is not satisfied." He then went on to state that the critical point in the discussion was whether the presumption of innocence in these cases was provisional or compelling, and referring to the passage in *Churchman's* case, which is set out above, beginning at p. 194: "The issue duly arises" down to "was always upon the party," he stated that that passage indicated that the presumption of innocence in these cases was provisional only, while the passage, at p. 195: "that the same strict proof is required in the case of a matrimonial offence

as is required in connection with criminal offences properly so called," indicated that the presumption of innocence in these cases was compelling. He further stated that the solution of the apparent difference was to be found by remembering that the statutory legal burden was the same in undefended as in defended cases and in cases when the King's Proctor intervened and when he did not, and that in the former cases at the most there appeared a suspicion of collusion or connivance, and that to require the same strict proof as was required in connection with criminal offences, that is to require collusion or connivance to be satisfied beyond reasonable doubt, would make the statutory legal burden of no effect, and indeed reverse it, and he came to the conclusion, therefore, that the presumption of innocence in these cases was provisional only, and was counter-balanced by circumstances which led to suspicion, and that thereupon the petitioner was left, as he had begun, with the legal burden of negativing collusion or connivance.

With regard to the evidence which is required to be given by a petitioner in order to discharge this legal burden as mentioned above, it may be helpful to refer to the position which applies in criminal law in cases where the onus is cast by a statute or order upon a defendant to prove a negative averment. In this connection it has been held that in a case of a charge under the Prevention of Corruption Act, 1916, by the terms of s. 2 of which the onus of proving that certain payments were not corruptly made as an inducement or reward contrary to the Prevention of Corruption Act, 1906, is placed upon the defendant, the onus upon him is only to satisfy the jury of the probability of his innocence, and it does not rest upon him to satisfy them as to this beyond all reasonable doubt (*R.* v. *Carr-Briant* (1943), 2 All E.R. 156; see also *R.* v. *Sellars* (1946), 1 All E.R. 82; *R.* v. *Putland and Sorrell, ibid.*, 85).

It may also be observed that this question of provisional and compelling presumptions has been developed by the same learned judge in an instructive and interesting article on "Presumptions and Burdens," in the October issue of 1945, vol. 61, of the *Law Quarterly Review*, from which further guidance may be obtained on the matter.

The principles, therefore, which it is submitted may be deduced from these two judgments are these:—

(1) Under the 1937 Act the presumption of law is still in favour of innocence and against collusion or connivance.

(2) This presumption is provisional only, and where the circumstances are such as to give rise to suspicion it is thereby counter-balanced, and the legal burden is then cast upon the petitioner under the section to satisfy the court that no collusion or connivance exists.

(3) This legal burden is discharged if upon the evidence it appears that the greater probability is that there is no collusion or connivance, and it is not necessary that the court should be satisfied as to this beyond all reasonable doubt.

(4) If the court, however, is not so satisfied, the duty lies upon it under the section to dismiss the petition.

# COMPANY LAW AND PRACTICE

## CONTRACT NOT TO ALTER ARTICLES OF ASSOCIATION

THE question whether a company can validly agree not to alter its articles of association in some particular respect is an easy enough one to propound, and it is curious (or so it seems to me) that the state of the authorities on the point is such that it is not possible to give a simple answer.

Section 10 of the Companies Act, 1929, provides that "subject to the provisions of this Act and to the conditions contained in its memorandum a company may by special resolution alter or add to its articles" and there is clear authority for the proposition that a company cannot by a provision in its articles deprive itself of the power which the section gives it to alter those articles; but can it fetter the exercise of that power by expressly or impliedly agreeing that certain of its articles shall not be altered?

This question did not directly arise for decision in the well-known case of *Allen* v. *Gold Reefs of West Africa, Ltd.* [1900] 1 Ch. 656, but the case is, I think, the best starting point for a discussion of the matter. There, it will be remembered, the company's articles gave a lien on partly-paid shares for all debts owed by the shareholders to the company. Z was the holder of fully-paid shares and, on his death, owed money to the company; the company's articles were altered so as to give a lien on fully-paid shares, and the Court of Appeal held that the alteration was valid and the extended lien was enforceable against Z's fully-paid shares; these shares had been taken subject to the original articles and the power of altering them given to the company by the statute, and there was no special contract that the shares should not be affected by a subsequent alteration of the articles. This decision, as I have indicated, does not directly bear on our question, but there are passages in the judgments which do, though it should be borne in mind that these are *obiter*. The first, from the judgment of Lord Lindley, M.R., is as follows: "Although the regulations contained in a company's articles of association are revocable by special resolution, a special contract may be made with the company in the terms of or embodying one or more of the articles, and the question will then arise whether an alteration of the articles so embodied is consistent or inconsistent with the real bargain between the parties. A company cannot break its contracts by altering its articles, and, especially with contracts between a member of the company and the company respecting his shares, care must be taken not to assume that the contract involves as one of its terms an article which is not to be altered." Then Romer, L.J., in his judgment says: "Special contracts might be made with particular classes of shareholders or individuals, or special obligations to them might be incurred by the company . . . which would prevent the articles being altered against them or prevent the alterations being enforceable against them."

The next case is *Punt* v. *Symons & Co., Ltd.* [1903] 2 Ch. 506 (which, as we shall see, has been judicially treated as overruled), and there the question under discussion did arise for decision. The company had entered into an express agreement not to alter articles relating to the appointment of a governing director, and when, subsequently, a general meeting was convened to alter these articles, it was sought to restrain the company from so acting. Byrne, J., held that the company could not contract itself out of the right to alter its articles and said that the contract could not operate to prevent the article being altered under the provisions of the Companies Act (now s. 10 of the 1929 Act), whatever the result of the alteration might be. "It may be that the effect of an alteration after a contract is retrospective. It may be that the remedy is in damages only, or it may be that the stipulation of the contract can be enforced notwithstanding the alteration of the articles. I think that the result of the alteration depends upon the special circumstances in each case, but, speaking generally, and without saying that there may not be some exceptions, . . . I consider that the principle of the decision in *Allen* v. *Gold Reefs of West Africa* applies to a case between the company and an outside party on a separate contract, as well as to a case between a company and a shareholder as the contract contained in the articles."

Next comes the decision of the Court of Appeal in *Baily* v. *British Equitable Assurance Co.* [1904] 1 Ch. 374 (overruled on another point [1906] A.C. 35). There the plaintiff had taken out a life policy in reliance on statements in a circular of the company that the profits were divided among the policy-holders without any deduction for a reserve fund. The company had been formed under a deed of settlement, and it was proposed to register the company with limited liability and to substitute a memorandum and articles of association for the deed of settlement, and among the articles was one

providing for the carrying of a percentage of the profits to a reserve fund. It was held that the company could not, by an alteration of its regulations, affect the plaintiff's right to have the whole of the profits divided among the policy-holders. It should be noted that the court did not, and was apparently not asked to, grant any injunction to restrain an alteration of its regulations by the company, and that *Punt* v. *Symons*, though referred to in argument, was not mentioned in the judgment; but Cozens-Hardy, L.J., delivering the judgment of the court, said this: "The rights of a shareholder in respect of his shares, except so far as they may be protected by the memorandum of association, are by statute made liable to be altered by special resolution; see *Allen* v. *Gold Reefs of West Africa*. But the case of a contract between an outsider and the company is entirely different, and even a shareholder must be regarded as an outsider in so far as he contracts with the company otherwise than in respect of his shares. It would be dangerous to hold that in a contract of loan or a contract of service or a contract of insurance validly entered into by a company there is any greater power of variation of the rights and liabilities of the parties than would exist if, instead of the company, the contracting party had been an individual. A company cannot, by altering its articles, justify a breach of contract."

The effect of this decision on *Punt* v. *Symons* was considered by Sargant, J., in *British Murac Syndicate, Ltd.* v. *Alperton Rubber Co., Ltd.* [1915] 2 Ch. 186. There the company had entered into an agreement with the plaintiff syndicate by which the latter, so long as it held 5,000 shares in the company, should have the right to nominate two directors to the board. Article 88 of the company's articles of association contained a clause to the same effect. The plaintiff had nominated two directors, but the company refused to accept this nomination and convened a general meeting for the purpose of cancelling article 88. The plaintiff thereupon brought an action to restrain the company from holding a meeting for this purpose, and an injunction to this effect was granted by the court: the learned judge referred to the authorities which I have mentioned, and said that the decision of the Court of Appeal in *Baily* v. *British Equitable Assurance Co.* was a clear authority for the proposition that a company may be restrained by injunction from altering its articles of association for the purpose of committing a breach of a definite contract, one of the terms of which is that the articles shall not be altered; and that the decision in that case had overruled *Punt* v. *Symons*.

These, I think, are the main authorities on the point, and it would seem, therefore, that the decision in the *British Murac* case holds the field. But it has met with a considerable amount of criticism—see, for example, Buckley on the Companies Act, 11th ed., at pp. 18–19. The burden of the criticism is, of course, that a company should not be able by a contract to deprive itself of the power given to it by statute to alter its articles; and, indeed, a consideration of the earlier authorities does not seem to me altogether to justify the conclusion of the learned judge in the *British Murac* case. He referred to the passage I have quoted from Lord Lindley's judgment in *Allen* v. *Gold Reefs*, which, he said, clearly recognises that if a contract involves as one of its terms that an article is not to be altered, then the company is not at liberty to alter that article so as to break that contract; but what Lord Lindley said was that "a company cannot break its contracts by altering its articles," which, I should have thought, meant that it cannot justify breaking its contracts by altering its articles, with the implied corollary that if it does so break its contract an action lies for breach of the contract. Again, as I have mentioned, the Court of Appeal in *Baily's* case did not expressly overrule or even refer to *Punt* v. *Symons*, and the relief granted was not an injunction to restrain the alteration of the articles, but a declaration that such an alteration could not be made so as to affect the plaintiff's contractual rights. The statement in the judgment that a company cannot, by altering its articles, justify a breach of contract, surely does not mean more than that the alteration will not necessarily excuse a breach of contract and the company may accordingly be liable in damages. Indeed, but for the decision in the *British Murac* case, I should have thought that both principle and authority led to this conclusion—that while a company cannot by contract deprive itself of its statutory right to alter its articles, yet if a shareholder or an outsider has contractual rights arising independently of the articles, those rights remain enforceable notwithstanding an alteration of the articles which purports to abolish them; so that the company could be restrained from acting on the articles as altered or, if it did so act, would be liable in damages. There is, indeed, a dictum to this effect in the speech of Lord Porter in *Southern Foundries* (1926), *Ltd.* v. *Shirlaw* [1940] A.C. 701 (a case which I have recently discussed in these columns); at p. 740 he says this: "A company cannot be precluded from altering its articles thereby giving itself power to act upon the provisions of the altered articles—but so to act may nevertheless be a breach of contract if it is contrary to a stipulation in a contract validly made before the alteration. Nor can an injunction be granted to prevent the adoption of the new articles, and in that sense they are binding on all and sundry, but for the company to act upon them will none the less render it liable in damages if such action is contrary to the previous engagements of the company." That, I think, is no more than a dictum, and so far as the report goes, there was no reference to the *British Murac* case; but the dictum is certainly in line with the criticism of that decision. But until the decision in *British Murac* is overruled, it must be taken into account and is authority for the proposition that a company can be restrained from altering its articles in breach of contract. The safer way of providing that articles shall not be altered is, if practicable, for the shareholders who have the voting power necessary to pass a special resolution for altering the articles to contract to exercise their votes so as to prevent such a resolution being passed.

# A CONVEYANCER'S DIARY

## DRAFTING AGAIN—II

I HAVE received a certain amount of correspondence with reference to the "Diary" of 4th May, in which I made some further observations as to the methods of drafting in general, and in particular sought to provide a will in a very simple form to meet the requirements of a correspondent, such requirements having been set out in the "Diary." One of the letters is as follows:—

"We are under the impression that about two or three years ago the author of the 'Diary' expressed strong condemnation of those draftsmen who prepared a will by setting out the testator's intentions as simply as possible, regardless of the effect of any relevant statutes, and particularly of the provisions in the Law of Property Act, 1925, and the Settled Land Act, 1925, which imply trusts for sale in various circumstances. We are also under the impression that he urged an express trust for sale should be set out in a will, except in the case of a will where the residuary estate, or the whole estate, is left to a single person who is also appointed sole executor. In the suggested draft, however, the author has left the trust for sale on the widow's death to be implied under s. 36 of the latter Act, and we should like to know the reason for his apparent change of view.

"Furthermore the author has given the widow her life interest in such a way that the provisions of the Settled Land Act, 1925, apply, and that has apparently been done with the sole intention of shortening the will. The result is that the executors must continue to hold the real property as such, or else execute a vesting deed, which would mean a grant to the widow's estate (and she may well have no

estate requiring a grant) on her death. If, however, the executors continue to hold the real property as such, and both die, the survivor dying intestate, a grant *de bonis non* will be required, which would have been unnecessary if the will had contained a trust for sale and the usual assent had been executed. Also so long as the executors continue to hold the estate in that capacity it will not be possible to appoint a new trustee on the death of one of them.

" The above observations are our principal criticisms of the will, but we do think that the usual forms should be used unless there are good conveyancing reasons for not using them.

" We can see no justification for drafting a will in a form which, while it may appear to the testator to express his intentions in simple language, may also give rise to complications after his death, which he would certainly not desire. We submit that the principal objects to be borne in mind when drafting a will are to see that it really gives effect to the testator's intentions, and that any avoidable difficulties likely to arise in administering the estate are avoided.

" In conclusion we may say that in our experience the vast majority of testators accept the advice of their solicitor as to the best method of effecting their wishes.
" York. " H. & A."

It is perfectly true that I have in the past criticised two things: First, the setting out of a testator's intentions as simply as possible, regardless of the legal effect of the words used; second, the setting out of them regardless of the particular effects of the Law of Property Act, and the Settled Land Act. Again, I have often urged the use of an express trust for sale rather than allowing an implied trust for sale to arise. But the draft will in the " Diary " of 4th May does not, I hope, offend against these standards. Its appearance of simplicity is deceptive: it cost considerable trouble to frame, and was put forward with a full appreciation and acceptance of its legal consequences, to which attention was drawn. My past criticisms have been directed against those draftsmen who act regardless of the legal consequences. Though I think the wording was simple, it was certainly not loose, unlike that of some simple wills which I have seen. Further, where there are to be undivided shares I have urged an express trust for sale, but in the draft will in the " Diary " of 4th May the penultimate trust was a trust for division in specie. There were to be no undivided shares, but divided shares. Such a provision would not bring into operation any implied trust for sale under s. 36 of the Settled Land Act. Finally, the draft provided that if there could not be a division of the whole estate in specie, the whole estate should be sold under an express trust for sale. In the provision concerning the house, I was catering for those cases, mentioned by the correspondent at whose suggestion the draft was made, where a client was unhappy at the idea of a trust for sale. If the position is fully appreciated, and if, therefore, there is not created that " inadvertent settled land " which I have criticised here, there can be cases where the arrangement suggested in my draft is satisfactory.

The second letter to which I would like to refer is as follows:—

" I am much interested in your article ' Drafting Again ' in THE SOLICITORS' JOURNAL of the 4th May, and particularly with your note to cl. 4 of the draft will, where you say that the house will be settled land, but the widow need not ask for a vesting assent, and generally should be advised that there is no advantage in doing so. If opportunity offered I should be interested if you could develop this point of view some time. I should like to know the reasons that weigh with you in suggesting that there would be no advantage generally in giving the widow a vesting assent. If there is no vesting assent and the widow wished to grant a tenancy of the house, who would be the appropriate person to do so?
" Birmingham. " L. A. S."

The point as to the vesting assent is of general interest. There is no duty upon a tenant for life to call for a vesting assent. If he desires to get the legal estate, so as to be in a position to sell it without interference from the executors, he is entitled to an assent. But, granted that he is entitled to have it at call, there is no need for him actually to have it until just before completion of any sale. On the other hand, the executors may wish to assent, so as to divest themselves of their responsibilities. If so, they are entitled to do so. But they are not bound to make an assent until it is called for. Therefore, if it is convenient to the tenant for life to leave the legal estate with the executors, and if the executors themselves are content with that position, and do not insist on giving an assent, there is no particular reason why one should be made. Executors have, for purposes of administration or during the subsistence of any life interest, all the powers of trustees for sale (see Administration of Estates Act, s. 39 (1)). They can therefore grant the tenancy, and such a grant is valid in favour of the tenant even though the tenant may have notice that all the liabilities, duties and legacies and so on have been discharged or provided for (Administration of Estates Act, s. 36 (8)). I suggest, therefore, that it is a matter of convenience where the legal estate shall be left. Either the life tenant or the executors can put an end to the period during which it remains vested in the executors if they wish to do so. But if only a single executor remains, an assent is desirable, in order to save any risk of a grant *de bonis non* being needed.

The third letter is as follows:—

" I hardly venture to trouble you with another letter, this time on your draft will in THE SOLICITORS' JOURNAL of 4th May, not, however, in criticism but to suggest an addition. I assume that Mrs. Doe has no appreciable income of her own. Nearly all testators want their wives to enjoy at once all their invested income, less the reduction caused by testamentary expenses, if not covered by net income, but very few indeed of them, rich or poor, realise that current income up to the death has to be capitalised, with the result that the wife has a seriously diminished income in the first year. This difficulty used to be met by a legacy. I prefer the addition of a clause, which I learnt from a draft of the late Mr. Ashworth James, his clause running as follows:—

" ' I declare that as between the capital and income of my estate all interest dividends and other periodic payments current at my death or which shall be declared or paid after my death in respect of any period antecedent thereto shall be treated as income.'

" In my experience testators without exception have welcomed this.

" Incidentally, the trouble of an apportionment is avoided in the case of an estate of £5,000.

" I echo the comments of your correspondent which you quote, and welcome your draft.
" Bristol. " C. M-K."

I have no comments on this matter except to say that I think the proposed insertion is admirable, and that in my view a clause of this kind should be inserted in a very large number of cases, including those where the estate is substantially bigger than that which I had in mind in the draft will of Mr. Doe.

One correspondent has asked whether I will undertake the preparation of a book of modern precedents on the lines of my recent articles. I am afraid that I cannot myself undertake it, but the idea is a useful one, and I hope that some reader of this column may feel inclined to do so. On the whole I think that it would be better that such a work should be written by a solicitor, because solicitors have a much wider experience of the ordinary cases than members of the Bar. I note that the writer of the first letter quoted above says that the vast majority of testators accept the advice of their solicitors as to the best method of effecting their wishes, and this is obviously as it should be. At the same time I have

considerable doubts whether the standard forms in the precedent books are the best method of effecting the wishes of the small testator. I have an uncomfortable feeling that part of the undoubted unpopularity of the legal profession with the general public is due to the fact that the public believes that we deliberately talk a verbose and pompous language. This impression can do nothing but harm to both parties; its removal is largely in our own power.

# LANDLORD AND TENANT NOTEBOOK

## RENT CONTROL: EFFECT OF SHARING HOUSE

THE decision in *Neale* v. *Del Soto* [1945] K.B. 144 (C.A.) not only astonished a good many of us at the time, but has also proved difficult to apply. It is not merely that the question whether what is shared is vital living accommodation or not is a question of degree; the decision itself has been found difficult to interpret on some occasions because different views have been taken, in later decisions, of the *ratio decidendi*.

The difficulty may be briefly stated in this way: it was held that certain premises were not "a part of a house let as a separate dwelling" (Increase of Rent, etc., Act, 1920, s. 12 (8)). But there are at least two ways in which this conclusion may be reached, the important ones, for present purposes, being by holding (*a*) that the premises were *not let*, and (*b*) that they were *not a dwelling-house*. These propositions are not, of course, mutually exclusive.

The importance of the distinction may be illustrated by shortly referring to the results of two county court cases. In the one, decided at Bloomsbury, the relevant facts were that the tenant enjoyed the exclusive use of (I deliberately resort to a neutral expression) of one room and shared the use of a kitchen with two other occupants of the house. His Honour Judge Konstam held that *Neale* v. *Del Soto* did not avail the landlord, because the sharing was not with him, but with other tenants. In the other, a decision of His Honour Judge Andrews at Ilford, the arrangement was to all intents and purposes similar; but the learned judge, applying *Neale* v. *Del Soto*, amended the particulars claim (drafted by a layman unaware of the authority in question) so as to avoid all reference to "letting" and "tenancy."

Before examining the only judgment delivered in *Neale* v. *Del Soto*, it may be usual to recall that the facts of that case were rather an extreme example of the type of problem to which the decision normally has to be applied or not applied. The house had seven rooms and the defendant landlord let two of these to the plaintiff, together with the use, jointly with her, of some six entities: kitchen, bathroom, lavatory, coal-house, garage and conservatory.

The reasoning of the judgment, delivered by Morton, L.J. (Scott and Finlay, L.JJ., concurring), appears to be that there was a letting, but not a letting of part of a house as a separate dwelling. "What was let was the two rooms, together with the use, in common with the landlord, of," etc. The head-note, when summarising the facts, uses the word "let," but in stating what was held seizes, I think, upon a passage in the judgment which follows that quoted above, and which runs: "The real substance of the matter was that there was sharing of the house. Each party had the exclusive use of some rooms and the two parties together had the use in common of other rooms." If one were to take this later passage by itself, one can, of course, find room for the proposition that what was decided was that Mr. Neale was a licensee and not a tenant.

*Neale* v. *Del Soto* was applied by the Court of Appeal a few months later in *Sharpe* v. *Nicholls* [1945] K.B. 382 (C.A.), but the circumstances were such that it did not matter whether no letting, no dwelling-house, or neither, had been the basis of the earlier authority. A county court judge had made it a condition of an order for possession of a cottage that the plaintiff "should allow defendant a Rent Act protected tenancy of the two front rooms, together with joint use of kitchen and offices," and this was held by MacKinnon, Lawrence and Morton, L.JJ., to be an invalid condition. MacKinnon, L.J., was content to say that *Neale* v. *Del Soto* showed that the court below had been in error; Lawrence, L.J.'s judgment dealt with other points that had arisen; MacKinnon, L.J., certainly treated the proposed condition as calling for the grant of a tenancy.

But when *Cole* v. *Harris* [1945] K.B. 474 (C.A.) came before the court and *Neale* v. *Del Soto* was distinguished "and explained," the divergence in views which accounts for the conflict between the two county court judgments referred to earlier in this article became apparent. The defendant landlord in *Cole* v. *Harris* had let to the plaintiff three rooms —a bedroom, living room and kitchen—on the first floor of his (the defendant's) house, together with the joint use with himself and the tenant of the second floor of a bathroom and lavatory. The view taken by the county court was that it had been laid down by *Neale* v. *Del Soto* that the sharing of any part of the accommodation which was essential to the conception of a dwelling-house, according to present-day standards, prevented the letting from being a letting of a part of a house as a separate dwelling. It will be observed that part of the finding was that there was a tenancy.

The majority of the Court of Appeal disagreed with this interpretation of *Neale* v. *Del Soto*, but in my submission the views of the two learned lords justices concerned, MacKinnon, L.J., and Morton, L.J., differ *inter se*, though they agree that the question is essentially one of degree and of the nature (essential living room or not) of what is shared.

Morton, L.J., as one would expect, spoke of the arrangement upon which he had adjudicated in the earlier case as *a* tenancy agreement, but not one by which the demised premises were let *as a separate dwelling*. But MacKinnon, L.J.'s judgment contains the following passages which tend to show that in his view Mr. Neale had never been a tenant at all: "These two contrasted sorts of agreement—(*a*) a demise of part of a house as a separate dwelling, and (*b*) an agreement to share the use of a house, are perfectly intelligible . . . In *Neale* v. *Del Soto* the judge found it was (*b*) and the Court of Appeal agreed with him. In this case I think on the admitted facts the arrangement fell under (*a*), not (*b*)." And, later: "The conclusion was that on the facts of *Neale* v. *Del Soto* there was *no demise at all*, but an agreement by the owner of a house to *take in a lodger*, giving him the exclusive use of some of the rooms of the house . . ." Lawrence, L.J.'s dissenting judgment was based on the view that when any essential accommodation was shared, whether "living" rooms or not, the Increase of Rent, etc., Acts did not apply, but he did treat the agreement before the court, and clearly considered that which had been before the court in *Neale* v. *Del Soto*, as a tenancy agreement, i.e., as one by which something not constituting a dwelling-house was demised, and not as an agreement merely conferring a licence.

It is strange that the only judgment delivered in *Neale* v. *Del Soto* should have received three different interpretations in a court which included the learned lord justice who had delivered it, and the result is, that while the earlier authority has been "distinguished and explained," one cannot say how distinguished and how explained. Hence the conflict between the interpretations given at Bloomsbury and Ilford; and there has been a similar irreconcilability between judgments delivered at West London (where what I may call the MacKinnon interpretation favoured by Ilford was applied) and Kingston (adopting the not-a-dwelling-house-though-let interpretation of Morton, L.J., applied at West London).

# TO-DAY AND YESTERDAY

**June 3.**—On 3rd June, 1676, the Middle Temple benchers ordered that " the defects and decays in the south-west corner of the Hall and south bay window be well and substantially repaired this summer . . . and, that there may be no interruption in the proceeding of the said building but the whole summer employed for the doing thereof effectually, it is further ordered that Master Whitlock's Reading be put off till next Lent."

**June 4.**—On 4th June, 1578, the Gray's Inn benchers ordered that all the back doors " in the middle wall towards the fields shall be dammed up and the wall well and sufficiently made by those that enjoy the same doors before six days next following upon pain to be put out of commons and so to remain until the same be reformed accordingly." In 1587 there was a similar order.

**June 5.**—On 5th June, 1586, the Inner Temple benchers declared that " forasmuch as the number of utter barristers is greatly increased and the exercise of learning much neglected, it is provided that as well all those that were called within three years as those that hereafter shall be called shall serve six grand vacations and twelve mean vacations upon pain of forfeiting 20s. for each default."

**June 6.**—When Cromwell and his Council made an ordinance " for the better regulating and limiting the jurisdiction of the High Court of Chancery," there were then three Commissioners of the Great Seal, Bulstrode Whitelocke, Sir Thomas Widdrington and John L'Isle. The first two considered it both illegal and injurious to the public and in consequence they were dismissed on 6th June, 1655, for refusing to put it into operation.

**June 7.**—On 7th June, 1546, the Inner Temple benchers ordered " that the readers of the three Houses of Chancery shall keep their readings and moots during the full and whole time of the terms and learning vacations by themselves or their sufficient deputy thereto appointed and admitted by the bench, then here being, upon pain and forfeiture for every offence of 40s. And that every outer barrister and junior barrister or other able to go forth to moots, shall be ready upon request to him made by any of the said readers or their deputy, to go with them to the said moots, except he be discharged by the said reader upon a reasonable cause shown, upon pain and forfeiture for every default of 20d."

**June 8.**—At 3 o'clock in the morning on 8th June, 1717, a fire broke out in the chambers of Richard Bonython, three pair up, No. 3, Coney Court, Gray's Inn. It was put out with the help of engines from two insurance offices and from St. Giles's and St. Andrew's and buckets from Lincoln's Inn and Barnard's Inn. The proprietors of the chambers were ordered to rebuild " at their own expenses or with the moneys to be received on account of their insurances." It cost £1 5s. 6d. to repair the Lincoln's Inn buckets, 13s. to repair the Barnard's Inn buckets and 18s. to repair the Gray's Inn buckets. Rewards were paid to the firemen, besides 2s. 6d. each to eighty-two casual helpers and 1s. 6d. each to six boys.

**June 9.**—On 9th June, 1619, it was ordered that Thomas Page, steward of Gray's Inn, should be granted a forty years' lease of a piece of ground " in the upper end of the court next Fullwood's Lane from Mr. Fullwood's building cross the said court to the wall of the Walks to the intent that he may build thereon, which buildings must be made of brick three stories high and to be inhabited by none but such as are fellows of this house." The chambers thus erected were known as Page's Buildings. They stood across Field Court facing east and were not demolished till 1894, after they had become unsafe. The site was never built on again.

### Wrong Man

There was a comedy of cross-purposes at Southend recently, when the police informed the court that the man in the dock was not the man who had been arrested on a charge of theft. The man arrested had given the name and produced the identity card of the man now before the court and had been released on bail. The police now asked for a warrant against the person who had produced the identity card. The incident recalls a story from that classic book of circuit reminiscences " Piepowder." There was once a man put into the dock on a serious charge. He bore the not uncommon name of John Smith, as did another man in the calendar. When called on to plead to the indictment, he earnestly protested that a mistake had been made. He was told that he would have an opportunity of addressing the jury later on, and in the meantime he must only say " Not guilty," which he did. The alleged offence was against a woman and while counsel was narrating his supposed iniquities he made several unavailing attempts to interrupt. At last the prosecutrix was put into the witness-box and required to identify him, which she indignantly declined to do, despite all persuasion and encouragement, so that finally the judge was obliged to direct an acquittal. " All I wanted to say, my lord," the prisoner remarked meekly before leaving the dock, " was that what I am really charged with is stealing an umbrella."

### Appeal for St. Paul's

The appeal lately made to raise £250,000 for the restoration of St. Paul's Cathedral, to repair the ravages of war, recalls an interesting appeal addressed by Charles I to the Society of Gray's Inn, in 1638 : " Trusty and well-beloved we greet you well. How far the decays and almost ruins of St. Paul's Church in London have been taken into our royal consideration yourselves cannot but have taken notice, the same being by our own special bounty and the charitable affections of our loving subjects in so fair a way of reparation, for the further advancing whereof we have thought fit to recommend the same to you, being unwilling that posterity should look over the catalogue of those benefactors and find no mention of so noble a society in the contribution to so great and glorious a work, to the which you have a more immediate relation than other place., your whole society being twice in a year by the orders of your House . . . to repair together to that church . . . And therefore we cannot doubt of your good and cheerful inclinations thereunto. Wherefore our pleasure is that you recommend this work to the several members of your House in our name assuring them that we shall take notice of their several expressions as a sign of their zeal to religion and conformity to our example, and . . . you are to cause a book to be made, wherein to insert the names of every member of your House . . . with the sum each man shall contribute and return the same . . . to our Council Board from whence (after due consideration thereof) it shall be carefully transmitted to the Chamber of London to be kept as a monument of your good and charitable dispositions." It is a model of a compelling appeal and it is sad to think that within a dozen years the King had ended his life on the scaffold and within thirty years the cathedral was utterly destroyed. During the Civil War the Parliamentary army used the body of the church as " a horse-quarter for soldiers " and the Puritans pulled down Paul's Cross.

# COUNTY COURT LETTER

### Claim for Rent by Forestry Commissioners

In *Attorney-General* v. *Llewelyn*, at Lampeter County Court, the claim was for £82 0s. 6d. as arrears of rent and mesne profits of a farm. The defendant admitted owing £56 19s. 6d. and counter-claimed as follows : £60 in respect of the closing of a road, whereby his son was prevented from going to school ; £30 for inconvenience in having to go two miles out of his way ; £25 for manure ; £6 for labour in erecting gates. The plaintiff's case was that, under an agreement dated the 30th March, 1942, the tenancy began on the 7th February, 1942. The annual rent was originally £52, but it was increased to £56 19s. 6d. as from the 29th December, 1942, in consideration of improvements. Rent was owing in respect of the half-years expiring on the 25th March and 29th September, 1944, when (owing to the defendant not farming properly) the tenancy was terminated by the War Agricultural Committee. The defendant, however, remained in possession until the 3rd March, 1945, and the mesne profits were £21 1s. The defendant and his wife gave evidence in support of the counter-claim. His Honour Judge Temple Morris, K.C., gave judgment for the plaintiff on the claim and counter-claim, with costs on Scale C.

### Application for Discharge from Bankruptcy

In a recent case at Aberystwyth County Court, a bankrupt applied for his discharge from bankruptcy. The applicant had filed his petition on the 20th June, 1936, after judgment against him in an Assize action for £1,000 damages and £165 costs, following a collision in which the applicant had been riding a motor cycle uninsured in 1935. Nothing had been paid to the Official Receiver, and the applicant had only been able to save £150. His father was willing to make the amount up to £200, which was the most the applicant could offer. There was only one creditor. His Honour Judge Temple Morris, K.C., refused the application.

**Possession of Municipal House**

In *Martley Rural District Council* v. *Bevan*, at Worcester County Court, the claim was for possession of 2, Malvern View Cottages, Withenford. The case for the plaintiffs was that the house was let to the defendant in November, 1944. At that date he was a farm worker, but he was not now in employment approved by the War Agricultural Executive Committee. Arrears of rent amounted to £12 6s. 5d. The defendant's case was that the arrears arose while he was in hospital. He had offered to pay the arrears. His Honour Judge Langman gave judgment for the amount claimed, and made an order for possession in six weeks. It is to be noted that under the Rent and Mortgage Interest Restrictions Act, 1939, s. 3 (2) (*c*), the Rent Acts do not apply to any dwelling-house in respect of which a local authority . . . are required to keep a housing revenue account.

# REVIEW

**Latey on Divorce.** Thirteenth edition. By William Latey, M.B.E., Barrister-at-law, and D. Perronet Rees, of the Divorce Registry. 1946. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. £3 7s. 6d. net.

Another edition of one of the standard works on divorce and matrimonial causes is always a valuable addition to the list of text books on such an important subject, and the 13th edition by W. Latey, M.B.E., Barrister-at-law, and D. Perronet Rees, of the Divorce Registry, maintains the high level set by its predecessors. In its set-up it follows the lines of the 12th edition, published in 1940, dealing in Pt. 1 with the principles of the Law of Divorce and Matrimonial Causes, while in Pt. 2 it deals with the practice of the Probate, Divorce and Admiralty Division in matrimonial suits. In view of the size of the book it is not possible in this review to deal seriatim with each chapter, but only to refer to a few of the more salient points.

Part 1.—In Chapter 2, Requisites of Marriage, reference is made to the provisions of the Marriage (Scotland) Act, 1939, the operation of which was suspended by the Postponements of Enactments (Miscellaneous Provisions) Act, 1939, whereby when it comes into force by Order in Council irregular marriages in Scotland will cease to be valid. Chapter 3, Jurisdiction and Domicil, deals with the important subject of jurisdiction which gives the court power to grant relief in dissolution, judicial separation, nullity and restitution suits (that as regards legitimacy and jactitation petitions being considered in Chapters 14 and 8 respectively), and the limited operation of the Matrimonial Causes (War Marriages) Act, 1944, upon the jurisdiction in divorce and nullity suits is referred to. In Chapter 4 the subject of Incurable Unsoundness of mind giving the right to a divorce is fully dealt with in the light of the recent cases, and reference is made to the existing Matrimonial Causes Rules in connection therewith, and in Chapter 5 the various aspects of desertion are fully discussed. Chapter 18 concerns the summary jurisdiction of justices in matrimonial matters, and reference is made to their increased powers and duties in this respect under the Matrimonial Causes Act, 1937, and this part concludes with Chapters 20 and 21, which deal with the Poor Persons Rules and Points on Procedure, which two chapters have been re-drafted since the previous edition.

Part 2.—This commences with an index to the various forms which are in use, and it refers to the page in the chapters on which each particular form is considered, and every aspect of divorce practice is covered from the drafting of an originating summons and petition and affidavit in support down to motions, injunctions and appeals, enforcing orders, and costs and taxation of costs, which last two subjects are dealt with in the concluding chapters. In each chapter reference is made to the appropriate rule and to the corresponding chapter in Pt. 1 in which the law and cases on the subject are considered, and attention is drawn to the effect on the practice of the present Matrimonial Causes Rules which came into force in 1944, and which repealed the previous rules. The various orders, and an index thereto, are given in pp. 898–922, while in the four appendices are set out, in (A) the Matrimonial Causes Acts and a number of miscellaneous Acts affecting the subject-matter of the book; in (B) the Matrimonial Causes Rules and certain other rules and orders; (C) the Practice Notes which have been issued in respect of the Matrimonial Causes Act, 1937; and (D) those War Emergency Acts, Orders and Rules which are likely to be kept in operation for some time to come.

The book contains a full table of cases and of the appendices, and it concludes with a detailed index. As stated in the preface, the latest cases are contained in a supplement which is carried in a pocket in the back cover, and no doubt this will be followed in due course by further supplements which will bring up to date the list of cases, statutes and rules of practice.

# NOTES OF CASES

## KING'S BENCH DIVISION

**Gordon** *v.* **Morgan**

Hallett, J. 26th March, 1946

*Landlord and tenant—Covenant to yield up in good repair—Blast wall erected by tenant—Not removed on termination of tenancy—Whether breach of covenant.*

Action tried by Hallett, J.

The plaintiff landlord let a house at Golders Green to the defendant tenant in May, 1940, for three years. The term of the lease having expired, the landlord claimed from the tenant, as damages for breach of the covenant to yield up the premises in good repair, £59 15s., which, as a necessary expense for the purchaser, was taken into account in the price which the landlord had been willing to accept on selling the house at the conclusion of the tenant's term. One item in the £59 15s. was the cost of removing a blast wall which the tenant had erected in the garage as a protection against enemy action but had not himself demolished on leaving.

Hallett, J., said that he was in some doubt whether or not the tenant was entitled to erect the blast wall without the landlord's permission. Whether he was or not, however, and even if, which seemed likely, the tenant was under an obligation to remove it when he yielded up the premises, the failure to remove it did not constitute a breach of the covenant to yield up the premises in tenantable repair. The cost of removing it could accordingly not be included in the damages awardable for breach of that covenant.

Counsel: *L. L. Rose; Pain* (*Lester* with him).

Solicitors: *M. A. Jacobs & Sons; Alexander Fine & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

**Parker** *v.* **Doncaster Amalgamated Collieries, Ltd.**

Humphreys, Lewis and Henn Collins, JJ. 21st January, 1946

*Master and Servant—Workman's breach of contract—Separate breaches alleged to constitute one continuing breach—Damages—Jurisdiction of justices—Employers and Workmen Act,* 1875 (38 & 39 *Vict. c.* 90), *s.* 4.

Case stated by justices.

At a court of summary jurisdiction informations were preferred under s. 4 of the Employers and Workmen Act, 1875, respectively, alleging that the appellant workman had on the 9th and 10th January, 1945, wrongfully absented himself from or neglected the service of the respondent employers at their colliery. On the first summons the claim was for £9, and on the second for £5, damages for breach of contract. On 9th January, 1945, after the afternoon-shift fillers had been working for about ten minutes, the main gate conveyor serving the unit broke down, and a delay of about fifty minutes ensued while the conveyor belt was repaired. After the fifty minutes' stand the workmen, including the appellant, refused to start work, claiming a certain additional payment under their contract of employment. On the morning of the 10th January, the workman descended the pit and presented himself for work at the lamp station in the usual way. Owing to bad roof conditions it had not been considered safe to move up the face conveyors, and the workman, therefore, could not do exactly the work which he was accustomed to do. He then said that he would not work because of the bad roof conditions, and left the pit. It was contended for the workman that there was only one, continuing, offence and that the issue of two separate summonses, each for claims of less than £10, in an attempt to confer jurisdiction on the court of summary jurisdiction to award more than £10, was an abuse of the process of the court. It was contended for the employers that the two breaches of contract were separate and distinct, and that as each claim was for less than £10 the justices had jurisdiction. The justices accepted the employers' contentions and awarded them the damages claimed. The workman appealed. By s. 4 of the Act of 1875, in any proceeding in relation to dispute between employer and workman, under the Act, a court of summary jurisdiction—(1) shall not exercise any jurisdiction where the amount claimed exceeds £10; and (2) shall not make an order for the payment of any sum exceeding £10" apart from costs.

Humphreys, J., said that, beyond all doubt, the justices had discretion to arrive at the conclusion which they formed. It was immaterial that they had awarded the employers a sum exceeding £10, since the sum awarded was made up of two sums of less than £10 each relating respectively to the two separate offences which they found to have been committed. The appeal failed.

COUNSEL: *Streatfeild*, K.C. and *Hurwitz*; *Devlin*, K.C.
SOLICITORS: *Jackson and Jackson* for *J. W. Fenoughty, Dunn and Co.*, Rotherham; *Bird and Bird*, for *C. M. H. Glover*, Doncaster.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Rowe *v.* Minister of Agriculture and Fisheries**

Lord Goddard, C.J., Croom-Johnson and Lynskey, JJ.
8th April, 1946

*Emergency legislation—Agriculture—Direction to cultivate—Land insufficiently specified—Defence (General) Regulations*, 1939 (*S.R. & O.*, 1939, *No.* 92).

Case stated by Huntingdonshire Justices.

An information was preferred on behalf of the Minister of Agriculture and Fisheries, the respondent, against the appellant, a farmer, charging him with contravening reg. 62 of the Defence (General) Regulations, 1939, by failing to comply with a direction given to him under reg. 62 (1), which provides that the Minister may give directions "with respect to the cultivation . . . of land," and that "such directions may be given . . . (*b*) by notice relating to the land specified therein served on the person by whom the directions are to be complied with." The notice served on the appellant directed him to carry out certain cultivation on "land occupied by you in the County of Huntingdon. Area: not less than 30 acres." The farmer, having been convicted, now appealed.

LORD GODDARD, C.J., said that the words in the direction, "land occupied by you in the county of Huntingdon, not less than 30 acres," seemed to anticipate that a certain clear description of the land would be given; but it was not. Could the direction be said, by any process of reasoning, to be a notice relating to land specified in the schedule? A notice was to relate "to the land specified therein," and was obviously to contain a specific direction; a special direction as opposed to a general direction. This was as general a direction as could be imagined. No land at all was specified in the order. The meaning of the order was that the farmer should be told exactly what he had to do; and, unless he were told that, he could not be said to have committed a breach of the order. The appeal must be allowed.

CROOM-JOHNSON and LYNSKEY, JJ., agreed.

COUNSEL: *Van Oss; Diplock.*

SOLICITORS: *Oldman, Cornwall & Wood Roberts*, for *C. Greenwood & Co.*, Peterborough; *Sir Denys Stocks.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Jones *v.* Ward & Co., Ltd.**

Lord Goddard, C.J., Croom-Johnson and Lynskey, JJ.
8th April, 1946

*Emergency legislation—Control of food—Eggs—Price restriction on sale by retailer—Whether applicable to ships' stores dealers—Eggs (Control and Prices) (Great Britain) Order*, 1942 (*S.R. & O.*, 1942, *No.* 1562, *as amended*), *arts.* 4, 6, *Sched. II, Pt. II—Ships' Stores (Control) Order*, 1942 (*S.R. & O.*, 1942, *No.* 2635), *arts.* 7, 9.

Case stated by the Recorder of Cardiff.

The appellant, a food officer, preferred an information charging the respondent company, ships' stores dealers, with contravening the Eggs (Control and Prices) (Great Britain) Order, 1942, by selling eggs to a shipowner, for consumption on board a ship, at a price exceeding the maximum specified in Sched. II to the Order. The Recorder allowed the company's appeal against their conviction by justices, and the food officer now appealed.

LORD GODDARD, C.J., said that it was first to be observed that the Eggs (Control and Prices) (Great Britain) Order, 1942, which prescribed the maximum prices at which eggs might be sold and, by art. 4, specified the only persons to whom a retailer might supply eggs, contained no provision permitting the sale of eggs for consumption on board ship. Moreover, the Ships' Stores (Control) Order, 1942, permitted ships' stores dealers to sell, *inter alia*, eggs, for consumption on board ship, on their obtaining a licence, while art. 7 (2) provided that, where one ships' stores dealer sold, *inter alia*, eggs to another such dealer, he might not charge prices in excess of the maximum prescribed by the Minister of Food by, among others, the Eggs, etc., Order of 1942. Since the Eggs, etc., Order of 1942 contained no provision permitting the sale of eggs for consumption on board a ship, the price restrictions imposed by that Order could not apply to a sale of eggs by a ships' stores dealer to a shipowner of eggs for consumption on board ship. The Ships' Stores (Control) Order, having by art. 7 (2) expressly imposed a price restriction on sales of, *inter alia*, eggs by one ships' stores dealer to another, impliedly left sales by such dealers to shipowners free from price restriction. Consequently a sale of eggs, at a price exceeding that prescribed by the Eggs, etc., Order of 1942, by a ships' stores dealer to a shipowner for consumption in his ship was not a contravention of either order. The Recorder's decision was right, and the appeal should be dismissed.

CROOM-JOHNSON and LYNSKEY, JJ., gave judgment agreeing.

COUNSEL: *Van Oss; Valentine Holmes and Carey Evans.*

SOLICITORS: *Treasury Solicitor; Wrentmore & Son*, for *Thomas John & Co.*, Cardiff.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Woolley *v.* Allen Fairhead & Sons, Ltd.**

Atkinson, J. 15th March, 1946

*Master and servant—Essential work—Employer's notice terminating employment—Permission of national service officer received after expiry of notice—Contract of employment not terminated—Workman's remedy for employer's breach of statutory duty—Essential Work (Civil Engineering and Building) (No. 2) Order*, 1941 (*S.R. & O.*, 1941, *No.* 2067), *art.* 4.

Action tried by Atkinson, J.

The plaintiff workman was a foreman carpenter employed by the defendants. On the 2nd March, 1942, the employers gave him seven days' notice terminating his employment. That notice having expired on the 9th March, the national service officer's permission for the termination was given on the 19th. On the workman's appeal, the appeal tribunal directed his reinstatement with his employers in May, 1942. He now claimed as damages for the employers' breach of art. 4 of the Essential Work (Civil Engineering and Building) (No. 2) Order, 1941, in dismissing him without permission, the wages which he could have earned between his dismissal and his reinstatement.

ATKINSON, J., said that apparently the practice was to give notice to terminate without any permission having first been obtained, it being deemed sufficient that the permission should come through before the expiry of the notice. That was a possible interpretation of the provision in the Order of 1941 that the employment should not be terminated without permission, for not the notice but the expiration of the notice in fact terminated the employment; but he (his lordship) did not favour that interpretation, because the object of the seven days' notice to a workman was to enable him to look for other work. That object would be defeated if, when the notice was given, he had no idea whether or not it would prove to become effective through the national service officer's giving permission. To a prosecution coming on for hearing before the permission was given there would have been no answer. Here the notice had been given without permission, the workman had been paid up and sent off under it. The argument for the employers failed that, when the permission did come, it had a retrospective effect and made the notice good. In his opinion, the breach had been complete, and for that breach, as had been held by the Court of Appeal in *George* v. *Mitchell*, the workman had a right of action for damages for the resulting loss. The workman's appeal having succeeded, the question was, what had been the relationship of the parties during the period between dismissal and reinstatement. In *George* v. *Mitchell*, *supra*, a stronger case, permission had been asked and refused and, nevertheless, the workman was dismissed. If the notice given to the workman was ineffective and his contract of employment continued, as held in that case, where permission had been refused, logically the same was true where permission had not in fact been obtained. The notice was ineffective, and the workman's contract of employment continued. If on the 19th March when the permission to terminate was given, the employers had given a fresh notice, it would have been valid, the employment would have terminated, and the measure of their liability would have been seventeen days. It was argued that once permission was given it was as if the Order did not exist, that there was merely an ordinary contract of employment which provided for a week's notice, and that the measure of the employers' liability was merely a week's notice. That argument was unsound, because the Order imposed a statutory duty to pay wages during the continuance of the contract, and a statutory duty could not be got rid of by simply repudiating. The workman was entitled under the Order to be paid until the termination of the contract, and as the contract never was terminated, must be entitled to his wages up to the moment of his return to work on reinstatement.

COUNSEL: *J. M. Shaw; Garland.*

SOLICITORS: *Neil Maclean & Co.; R. L. Mason.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

**Evans *v.* Rogers**

Lord Goddard, C.J., Humphreys and Singleton, JJ.
8th May, 1946

*Food and drugs—Milk—Sampling—Place of delivery—Food and Drugs Act*, 1938 (1 & 2 *Geo.* 6, *c.* 56), *s.* 68 (4).

Case stated by Montgomeryshire Justices.

An information was preferred by the appellant, a food and drugs inspector, against the respondent, a farmer, alleging that he had contravened s. 24 (1) of the Food and Drugs Act, 1938, by selling milk adulterated with water. At the hearing of the information the following facts, among others, were established. The farmer was under contract with the Milk Marketing Board to sell them the milk produced at his farm. In pursuance of that contract, and as directed by the board, he delivered the milk daily to the " farm collecting point," as defined in the contract, for collection in his lorry by one Griffiths, a bulk purchaser of milk from the board. By a diversion order made by the board, milk of the respondent farmer surplus to Griffiths' requirements was sent on by the latter by road to the Four Crosses Creamery some thirty miles away. There was no evidence that the farmer was aware of either the order or that his milk was so sent on. A sample of the farmer's milk, having been taken on arrival at that creamery, was found to contain 12 per cent. of added water. It was contended for the farmer that the sample was taken otherwise than at the place of delivery of the milk. The justices accepted that contention and dismissed the information. The inspector appealed. By s. 68 (4) of the Act of 1938, " a sampling officer . . . may take samples of milk at any dairy, or at any time while it is in transit, or at the place of delivery to the purchaser, consignee or consumer."

LORD GODDARD, C.J., said that if something took place in connection with milk after it had passed from the producer's control, the court should not find him guilty of an offence unless the Act of 1938 compelled it. In *Watson* v. *Coupland* (1945), 109 J.P. 90, the court expressly left open the question where the place of delivery was for the purposes of s. 68 (4). There the milk was delivered to a carrier, who conveyed it to premises at Nottingham, and it was held that the property in the milk passed at those premises, and that the sale therefore took place there. In his (his lordship's) opinion the place of delivery for the purposes of both s. 68 (4) and the farmer's contract with the board was the place where delivery took place to the purchaser as directed by the board, that was, here, the farm collecting point. It might be argued successfully, but he (his lordship) did not so decide, that, as Griffiths was also a carrier to the board, he was acting in a dual capacity as carrier and purchaser, and that the place of delivery was therefore his premises. The sample, however, had been taken at the Four Crosses Creamery. The subsection had thus not been complied with, and the information had rightly been dismissed. The appeal failed.

HUMPHREYS, J., agreed.

SINGLETON, J., gave judgment agreeing.

COUNSEL: *Gattie*. There was no appearance by or for the respondent farmer.

SOLICITORS: *Sharpe, Pritchard & Co.*, for *P. E. White*, Welshpool.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF CRIMINAL APPEAL

**R. *v.* Gibbon**

Lord Goddard, C.J., Oliver and Croom-Johnson, JJ.
16th April, 1946

*Criminal law—Appeal against sentence—Right of abandonment without notice—Criminal Appeal Rules*, 1908 (*S.R. & O.*, 1908, *No.* 247/L.7), *rr.* 22, 23.

Appeal against sentence.

The appellant was convicted at Newcastle on Tyne Assizes of rape and aiding and abetting rape, and sentenced on each charge to three years' penal servitude, the terms to be concurrent. He now appealed against sentence.

LORD GODDARD, C.J., in giving the judgment of the court, said that the appeal would be dismissed. The real object of giving leave to appeal had been to consider whether or not the sentence should not be materially increased. The only point of importance in the case was whether or not, leave to appeal having been given, it was open to the prisoner, without leave of the court, to abandon his appeal. That depended on rr. 22 and 23 of the Criminal Appeal Rules, 1908, made under the Criminal Appeal Act of 1907. An appeal against sentence or on fact could only be by leave, which the appellant had obtained. By r. 22, once leave to appeal had been given, it was not necessary for a further notice of appeal to be served, but the notice of application for leave to appeal was to stand as the notice of appeal. By r. 23, the side note to which was " abandonment of appeal," " an appellant at any time after he has duly served notice of appeal or of application for leave to appeal, or of application for extension of time within which under the Act such notices shall be given, may abandon his appeal by giving notice of abandonment thereof in the form (III) in the schedule to these rules to the registrar . . ." The court would not prevent a prisoner from exercising the right to abandon his appeal merely because, not having had the advantage of seeing counsel until the last moment, he had not had time to put the notice into writing. Under r. 23 the prisoner could at any time abandon his appeal. As counsel had told the court, the moment the case was called on, that the appellant had abandoned his appeal against sentence, the appellant had a right to abandon it, and therefore the sentence could not be increased.

COUNSEL: *Aarvold; Anthony Hawke.*

SOLICITORS: *Registrar of Court of Criminal Appeal; Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# RECENT LEGISLATION

## STATUTORY RULES AND ORDERS, 1946

No. 725. **Agricultural Goods Vehicles** (Temporary Relief from Duty) Order. May 20.

No. 712/L.11. **Matrimonial Causes** (District Registries) Order. May 16. [*Ante.*, p. 261.]

No. 683. Matrimonial Causes (War Marriages) (Malta) Order in Council. May 15.

No. 731. **Penicillin** (Control) (No. 1) Order. May 21.

No. 695. **Road Vehicles** Standing Passengers (Amendments) Order. May 16.

No. 696. **Trolley Vehicles** Standing Passengers (Revocation) Order. May 16.

No. 734. **Unemployment Insurance** (Insurance Industry Special Scheme) (Amendment) Order. May 22.

No. 740. **Wages Board** (Industrial and Staff Canteen Undertakings) (Amendment) Order. May 22.

No. 741. Wages Board (Licensed Non-residential Establishment) (Amendment) Order. May 23.

No. 742. Wages Board (Licensed Residential Establishment and Licensed Restaurant) (Amendment) Order. May 23.

No. 743. Wages Board (Unlicensed Place of Refreshment) (Amendment) Order. May 23.

**[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]**

# PARLIAMENTARY NEWS

## HOUSE OF LORDS

Read First Time :—

LONG EATON URBAN DISTRICT COUNCIL BILL [H.C.]. [28th May.

Read Second Time :—

COAL INDUSTRY NATIONALISATION BILL [H.C.]. [29th May.

HOUSING (FINANCIAL PROVISIONS) (SCOTLAND) BILL [H.C.]. [30th May.

Read Third Time :—

ASTLEY AINSLIE HOSPITAL ORDER CONFIRMATION BILL [H.C.]. [30th May.

LONDON MIDLAND AND SCOTTISH RAILWAY ORDER CONFIRMATION BILL [H.C.]. [30th May.

MARQUESS OF ABERGAVENNY'S ESTATE BILL [H.L.]. [30th May.

## HOUSE OF COMMONS

Read Second Time :—

BRITISH MUSEUM BILL [H.L.]. [30th May.

MINISTERIAL SALARIES BILL [H.C.]. [29th May.

WEST MIDLANDS JOINT ELECTRICITY AUTHORITY PROVISIONAL ORDER BILL [H.C.]. [29th May.

Read Third Time :—

LICENSING PLANNING (TEMPORARY PROVISIONS) BILL [H.L.]. [30th May.

NATIONAL INSURANCE BILL [H.C.]. [30th May.

## QUESTIONS TO MINISTERS

### LAW AND ACCOUNTANCY. ARTICLED PUPILS

Mr. KENDALL asked the Minister of Labour if young men, who were articled to accountants and solicitors prior to their being called up, may be released from the services under Class B to enable them to complete their training, as is now the case with university students.

Mr. ISAACS : I regret that I am unable to agree to the suggested extension of release in Class B. [30th May.

### FURNISHED HOUSES (RENT CONTROL)

Squadron-Leader FLEMING asked the Minister of Health when will the proposed regulations under the Furnished Houses (Rent Control) Act, 1946, be issued ; and whether they will be made available to the public before quarter day, 29th September next.

Mr. BEVAN : The regulations have been made and will be on sale as soon as copies can be printed. [30th May.

# OBITUARY

### MR. R. F. BAYNES

Mr. Reginald Frederick Baynes, solicitor, of Messrs. T. G. Baynes & Sons, solicitors, of Bexley Heath, died on Sunday, 12th May, aged forty-five. He was admitted in 1924.

### MR. W. BISHOP

Mr. William Bishop, solicitor, of Claygate, Surrey, died on Sunday, 19th May, aged eighty-two. He was Chief Solicitor to the Southern Railway from 1923 until his retirement in 1935.

### MR. T. B. COX

Mr. Thomas Berridge Cox, solicitor, of Nottingham, died recently, aged seventy. He was admitted in 1898.

### Mr. J. ODDY

Mr. Josiah Oddy, barrister-at-law, died on Thursday, 9th May, aged seventy-five. He was admitted in 1897.

### MR. R. LEONARD

Mr. Robert Leonard, solicitor, until recently senior partner of Messrs. Leonard & Pilditch, solicitors, of Westminster, S.W.1, died on Wednesday, 29th May, aged eighty-seven. He was admitted in 1881.

### MR. T. W. PICKUP

Mr. Thomas William Pickup, solicitor, of Messrs. Redfern and Co., solicitors, of Birmingham, died on Sunday, 19th May. He was admitted in 1909.

# NOTES AND NEWS

### Honours and Appointments

Mr. CECIL R. HAVERS, K.C., of the Inner Temple, has been elected a Master of the Bench.

Mr. A. ROYLE, Deputy Town Clerk of Wigan, has been appointed Town Clerk of that borough. He was admitted in 1929.

The appointment of Mr. DAVID LLEWELYN JENKINS, K.C., as Attorney-General of the Duchy of Lancaster has now been gazetted. He was called by Lincoln's Inn in 1923.

Mr. HOWARD WILLIAM MAITLAND COLEY has been appointed Recorder of the Borough of Wenlock. Mr. Coley was called by the Middle Temple in 1934.

Mr. J. N. STOTHERT, Deputy Town Clerk of Paddington, has been appointed Town Clerk of Leamington. He was admitted in 1933

Mr. G. GLYNN BLACKLEDGE has been appointed stipendiary magistrate for Liverpool. He was called by the Middle Temple in 1920.

Mr. G. L. PEACE, Solicitor, of Messrs. Littlewood, Peace and Lanyon, has been appointed Senior Legal Assistant to the Control Commission for Germany and Austria. He was admitted in 1919.

Mr. LINTON THEODORE THORP, K.C., has been appointed a Commissioner of Assize on the South Eastern Circuit. He will sit at Bury St. Edmunds and at Norwich in addition to Mr. Justice Macnaghten. Mr. Thorp was called by Lincoln's Inn in 1906.

Sir HUBERT HOULDSWORTH, K.C., has been appointed Recorder of Doncaster in succession to Mr. C. B. Fenwick, who has been appointed Recorder of Halifax. Sir Hubert Houldsworth was called by Lincoln's Inn in 1926, and Mr. Fenwick by the Inner Temple in 1911.

### Notes

Steps are being taken to prepare a history of The Inns of Court Regiment, but before this can be done, it will be necessary to fill many gaps in the records. Anyone who may possess photographs (particularly those taken between 1860 and 1890), documents, badges or items of the old grey and scarlet uniform, relating to the Inns of Court Rifle Volunteers, is asked to communicate with the Keeper of the Records, The Inns of Court Regiment, 111, Grange Road, Ealing, W.5.

## THE LAW ASSOCIATION

The usual monthly meeting of the Directors of the Law Association was held on the 27th May, Mr. Frank S. Pritchard in the chair. The other Directors present were Messrs. Arthur E. Clarke, T. L. Dinwiddy, Ernest Goddard, G. D. Hugh Jones and Wm. Winterbotham, and the Secretary, Mr. Andrew H. Morton. The sum of £878 10s. was voted in relief of deserving applicants, arrangements were made for the annual general court at The Law Society's Hall, on 6th June, and other general business was transacted.

## THE LAW SOCIETY

The annual general meeting of the members of The Law Society will be held in the Hall of the Society, on Friday, the 5th July, 1946, at 2 p.m. The following are the names of the members of the Council retiring by rotation : Messrs. Bateson, Collins, Garrett and Gillett, The Rt. Hon. Lord Hemingford, Sir Edwin Herbert, Messrs. Leaver, Mainprice and Norton, and Sir Stanley Pott. So far as is known, they will be nominated for re-election. There are two other vacancies, caused by the death of the Rt. Hon. E. Leslie Burgin, and by the resignation of Mr. J. C. Medley, respectively.

## SERVICE MEN'S CLAIMS FOR REINSTATEMENT

The Ministry of Labour has issued the following statement :—

References have appeared in the Press to a recent decision of the Chatham Reinstatement Committee, and it has been stated that a man cannot make a valid application while he is on demobilisation leave. Without expressing any opinion on the correctness or otherwise of the decision on the particular case before the Chatham Reinstatement Committee, which may possibly be the subject of an appeal to the umpire, the Ministry of Labour, in view of s. 20 (4) of the Reinstatement Act, adheres to the view expressed in the leaflets that men wishing to claim reinstatement should make their application not later than the fifth Monday after the beginning of their release leave.

### Wills and Bequests

Mr. P. R. A. Baker, solicitor, of Englefield Green, Surrey, left £40,429.

Mr. A. E. H. E. Letts, solicitor, of Sutton and Finsbury Square, E.C.2, left £86,048, with net personalty £48,671.

Mr. C. F. J. Jennings, solicitor, of Beckenham, left £23,469, with net personalty £21,456. His will stated : " I hope I may be missed by my family, but trust they will not think of me as lost, but only gone on a long journey which they in turn will take and to a goal where we look for the utmost happiness ; and that they will not mope or refrain from amusements or festivities after I pass away."

" THE SOLICITORS' JOURNAL "

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